Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
	)	
Petition of the Multifamily Broadband Council	)	
Seeking Preemption of Article 52 of the	)	MB Docket No. 17-91
San Francisco Police Code	)	

COMMENTS OF DIRECPATH, LLC

INTRODUCTION

DIRECPATH, LLC ("DIRECPATH") hereby submits its initial comments to the Federal Communications Commission in response to the April 4, 2017, Public Notice in the above-referenced proceeding. The Commission's Public Notice seeks input on a petition submitted by the Multifamily Broadband Council ("MBC"). MBC's petition seeks a declaratory ruling that Article 52 of the San Francisco Police Code is preempted because Article 52 conflicts with the Commission's regulatory frameworks governing competitive access to inside wiring in multi-tenant buildings, bulk billing arrangements, and forced network sharing obligations, and because federal law and policy have "occupied the field."

For the reasons described below, the Commission should grant MBC's petition.

1. I, Lindsay M. Weaver, am the President of DIRECPATH, LLC, based in Atlanta, Georgia. DIRECPATH was formed in 2006 as a private cable operator ("PCO"), offering video, voice and Internet services to residential multi-tenant properties in direct competition with the large incumbent MSO cable operators and telcos.

2. DIRECPATH provides its services to thousands of units in dozens of markets throughout the U.S. We offer highly competitive video, Internet and voice services to our customer base at market competitive prices as compared to the large incumbents. We also serve affordable housing communities, such as senior and assisted living and student housing, with services that in many cases the large providers have been unwilling to provide at an affordable cost.

3. I joined DIRECPATH soon after it was founded in 2006. As such, I have a total of 11 years of experience in the PCO industry, and have a considerable background dealing with the technical, economic, and competitive challenges faced by PCOs throughout the country, particularly in markets where private, smaller providers must compete with much larger players that have tremendous financial resources.

4. DIRECPATH faces significant challenges today is obtaining financing on favorable terms and conditions. For smaller providers like us, such financing is critical, given the substantial capital outlay required to construct and launch a private cable system in a multi-tenant community. It can often take years to recover the initial capital outlay before generating a positive return on the capital invested in infrastructure and the ongoing monthly recurring servicing fees.

5. When DIRECPATH wins a bid to serve a multi-tenant community, it must secure financing to construct its video and broadband distribution system. This, in turn, requires DIRECPATH to submit indicators of likely success, such as an agreement granting DIRECPATH undisturbed use of designated runs of the community owner's inside wiring and predictable revenue streams, or a bulk billing arrangement under which the community owner purchases service and provides it as an amenity for all occupants at a steep discount off of regular retail pricing. If revenue streams are unpredictable due to policies interfering with contractual rights (e.g., for wiring or bulk services), lenders will either be unwilling to loan or will lend at significantly higher rates, which may limit our deployment to larger, more dense, and higher income properties. By raising the barriers to investment in smaller, older, and low income MDUs, Article 52 makes it harder for DIRECPATH to contribute to narrowing the Digital Divide.

6. If allowed to stand, Article 52 policies would eliminate these types of arrangements and make it extremely difficult for private ISPs and PCOs to obtain financing and compete against better-funded providers who do not need outside financing. For example, where a private ISP or PCO has successfully negotiated an agreement for exclusive access to designated runs of the community owner's wiring, Article 52 nullifies that arrangement by mandating that the community owner allow all comers to share his or her wiring. In most instances, DIRECPATH relies on exclusive access to certain wiring in order to deliver its services, for economic and technical reasons. Concurrent shared wiring among different providers has been near impossible due to the frequency allocation requirements for high bandwidth services such as gigabit Internet service and 4K video streaming. Alternating use of the same wiring results in inconsistent labeling, unwanted disconnects, additional service calls, and harmful damage and splicing of cable.

7. DIRECPATH has had its services disrupted on multiple occasions by competing providers who disconnect a DIRECPATH subscriber's wiring and reattach that wiring to their own equipment. This is not uncommon in multi-tenant properties where multiple providers compete for customers using the same wiring. This inevitably inconveniences tenants and causes DIRECPATH and other private ISPs and PCOs to lose subscribers. In one such instance, technicians and sales individuals for a large MSO physically cut all of the homeruns connected to our customers in the telecom closets and then immediately tagged all of the doors in the community that stated the community now had a new service provider and that they had to call the MSO's number to switch their service over to the MSO. This act led to the property management requiring representatives of this MSO to be escorted every time they entered the community.

8. In another instance, technicians and sales individuals for a large MSO engaged in physically disconnecting our homeruns from our systems for specific buildings in a garden-style multifamily community and then a sales rep would knock on the residents' doors of those buildings and try to convince them to switch their service over to the MSO. They did this systematically over a period of days until we engaged law enforcement and the MSO's corporate management. The MSO, as is common in the PCO industry, denied that they were even on the property during that time, despite several eye witness accounts. The MSO said it must be their contractors—which is even more troubling that they are employing contractors who they have little to no control over their actions. One resident at this community stated that when they saw one of the MSO's technicians on the property she would scream out to him to not disconnect her services like he had been doing over the past several evenings. Under Article 52, these problems will be significantly amplified due to an even larger number of providers operating in the very small spaces of telecom closets with full access to each other's distribution equipment and homerun wiring with little to no ability to identify the offending provider(s).

9. We are also very concerned about Article 52's impact on bulk billing arrangements. DIRECPATH frequently enters into bulk billing contracts with community owners. These agreements allow DIRECPATH to offer reduced prices to the residents because 100% of the residents are enrolled, which significantly reduces the operating costs per subscriber. Many residents, especially in affordable housing communities, have insufficient credit ratings to qualify for retail video and Internet services without paying large upfront security deposits. Low credit ratings also preclude residents from subscribing to advanced programming (i.e. HD and 4K programming) and advanced equipment (i.e. HD DVRs) without paying even larger upfront deposits. Under bulk billing arrangements, deposits are generally not required for residents to upgrade to these advanced services and equipment, which further breaks down the barrier of the Digital Divide. In many cases, PCOs would have been unable to provide any type of video and Internet services at affordable rates without the guarantee of a bulk billing arrangement. But bulk billing arrangements make no economic sense for a service provider or a community owner unless the provider is able to serve all or nearly all of the tenants in a building. Article 52 effectively overrides bulk billing arrangements by requiring community owners to allow any communications service provider to enter his or her community and share the community owner's existing wiring. Under these circumstances, it is virtually impossible for the provider to serve all or nearly all of the tenants in a building.

10. Also, in a bulk billing arrangement, community owners are obligated to pay the provider for service to each unit, even where that unit receives service from another provider. Having to pay for services that residents are not receiving deters community owners from considering bulk billing contracts, which ultimately widens, not narrows, the Digital Divide.

11. DIRECPATH includes service level agreements ("SLAs") in our contracts with community owners. Our SLAs typically include mandatory deadlines for repairing service interruptions and outages, completing installations, and enforceable standards to maintain minimum bandwidth to a community. SLAs are an effective way for our company to distinguish itself from larger providers that do not offer substantive service level guarantees. Under Article 52, however, we cannot firmly commit to SLAs, because we do not have protected and undisturbed control over the wiring being used to deliver our services to customers.

Furthermore, since Article 52 allows providers to gain access to buildings with limited direct investment in the community and *without* committing to any service standards, the ordinance fosters a "race to the bottom" for service quality.

12. Finally, DIRECPATH has directly benefited from the FCC's inside wiring rules. Prior to the enactment of these rules, DIRECPATH and other PCOs were shut out from being able to serve thousands of communities, due to anti-competitive agreements signed by the large service providers. There is no doubt that this type of thoughtful, evidence-based rulemaking on the part of the FCC has created a more equal playing field in multi-family communities, which has led to more choices for consumers now than ever before. Based on my 11 years of experience in the PCO industry, I'm confident that ordinances such as Article 52 will primarily benefit a small set of large, well-funded service providers, while significantly reducing the number and quality of choices for consumers.

CONCLUSION

For the reasons discussed above, the Commission should find that Article 52 is preempted by federal law and policy.

Respectfully submitted,

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President

William K. Dodd
Chairman

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